

EXHIBIT 67

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK: CIVIL TERM: PART 61
3 -----X

PACIFIC ALLIANCE ASIA OPPORTUNITY FUND L.P.,

4 Plaintiff,

5 - against -

INDEX #
652077/2017

6 KWOK HO WAN, GENEVER HOLDINGS LLC,
7 GENEVER HOLDINGS CORPORATION,

8 Defendants.

-----X

9 Motion

10 September 30, 2020
11 Skype Teleconference

12 B E F O R E: THE HONORABLE BARRY OSTRAGER,
13 Justice of the Supreme Court

14 A P P E A R A N C E S:

15
16 O'MELVENY & MYERS LLP
17 Attorneys for the Plaintiff
18 7 Times Square
19 New York, NY 10036
20 By: EDWARD MOSS, ESQ.
21 STUART SARNOFF, ESQ.

22
23 HODGSON RUSS LLP
24 Outgoing Attorneys for Mr. Kwok
25 605 Third Avenue, Suite 2300
New York, NY 10158
By: MARK HARMON, ESQ.

mlp

1 A P P E A R A N C E S: (Cont'd)

2

3 BAKER HOSTETLER LLP
4 Incoming Attorneys for Mr. Kwok
5 45 Rockefeller Plaza
6 New York, NY 10111
7 By: MELISSA CARVALHO, ESQ.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MICHELE PANTELLOUKAS
Senior Court Reporter

mlp

1 THE COURT: This is an order to show cause for a
2 restraining order. And what I would like to do, subject to
3 what I hear from the parties, is schedule this for a
4 hearing, including potentially an evidentiary hearing, for
5 October 8, which is exactly eight days from today. And I
6 would hope that counsel for Mr. Kwok would agree
7 voluntarily to preserve the status quo between now and
8 October 8.

9 So let me hear from counsel for Mr. Kwok.

10 MR. HARMON: Good morning, Your Honor. This is
11 Mark Harmon.

12 I am in a bit of an awkward situation, as we
13 learned yesterday that Hodgson Russ is being replaced by
14 Baker Hostetler, and I am anticipating that we will be
15 asked to sign, and will sign, a substitution of counsel
16 either later today or tomorrow. So it creates, as you can
17 imagine, Your Honor, an awkward situation for us regarding
18 your proposal or suggestion. Let me say that we are not in
19 a position today to stipulate to temporary relief, but nor
20 are we going to object to the temporary relief that Your
21 Honor has suggested in principle.

22 Preserving the status quo is a broad term, so I
23 would just suggest that it be clarified that during the
24 pendency of the status quo that Mr. Kwok is allowed to make
25 payments for valid -- in the ordinary course, for valid

mlp

1 consideration.

2 And I suppose I need to leave to counsel that is
3 replacing us, who I understand is also on the call, to
4 just -- to raise any issues regarding scheduling and the
5 like.

6 MS. CARVALHO: Good morning, Your Honor.

7 This is Melissa Carvalho with Baker Hostetler.
8 My colleague, John Siegal, may be on the line as well.

9 We wanted to participate today to introduce
10 ourselves and let the Court know there will be a
11 substitution of counsel. We do plan to have the consent to
12 change counsel filed today. We will be sending it to
13 Mr. Harmon within a couple of hours.

14 So, we would like to be heard on the order to
15 show cause briefing schedule, as well as the pending
16 motion, I believe it is motion nine, for damages. Just so
17 we can set a briefing schedule that will allow us to get up
18 to speed as quickly as possible, and get all of this
19 underway.

20 THE COURT: I issued a judgment on liability at
21 the last oral argument. We are not having a damages trial
22 in the immediate near term. But, what we do need to
23 address and resolve is the plaintiff's request that
24 Mr. Kwok be enjoined from rendering any judgment
25 meaningless by transferring assets that would be subject to

1 a potential damages award. And obviously he has to -- the
2 plaintiff has to make a showing to obtain some type of de
3 facto injunction on how Mr. Kwok conducts his business and
4 his personal affairs.

5 But all that is before us today is an issue as to
6 whether or not we can preserve the status quo between now
7 and when we have a hearing on October 8. And you have
8 indicated that you are going to file a substitution as
9 counsel. And for purposes of the proceedings this morning
10 we will assume, without any objection from anybody, that
11 you have affected the substitution. And I'll hear you with
12 respect to my proposal that Mr. Kwok agree to maintain the
13 status quo, except with respect to ordinary expenses.
14 Nobody is preventing him from ordering dinner or buying a
15 newspaper. He just can't sell his Rolls Royce, if he has
16 one.

17 I am waiting to hear from successor counsel on
18 that issue.

19 MS. CARVALHO: Yes, we are in agreement with the
20 views that were presented by Mr. Harmon as current counsel
21 of record that, you know, that can be agreed to as long as
22 there is an exception for ordinary course transactions and
23 it isn't as broad.

24 THE COURT: All right.

25 And counsel for the plaintiff?

1 MR. MOSS: Yes, Your Honor. On the -- are you
2 asking for our position on the TRO?

3 THE COURT: Yes.

4 MR. MOSS: Okay. Sure. So, Your Honor, I think
5 we would be fine with a TRO enjoining Mr. Kwok from
6 dissipating his assets. I think the devil will be a little
7 bit in the details as far as exactly what that says. I am
8 not sure if the Court would like us to submit a proposed
9 order or if the Court will fashion one. What we have asked
10 for is an order enjoining and restraining Mr. Kwok with the
11 same affect as if a restraining order had been served upon
12 him after judgment from making or causing any sale,
13 assignment, transfer or interference with any property in
14 which he has an interest or from paying over or otherwise
15 disposing of any debt now due or thereafter coming due to
16 him, subject to the exceptions set forth CPLR 5222.

17 I submit, Your Honor, that that is the
18 appropriate form of relief here. CPLR 5229 essentially is
19 temporary relief. It provides an injunction, before the
20 injunction that will automatically be entered when we get
21 our judgment. So, that essentially is temporary relief.
22 And all we are asking for here is for that relief to be
23 extended prior -- for the next eight days, I guess, prior
24 to the hearing.

25 As we set out, Your Honor, the only requirement

mlp

1 under CPLR 5229 is a verdict, a decision in the plaintiff's
2 favor. And it has been applied precisely, Professor Siegal
3 talks about how it is precisely for this situation, where
4 there is an interval between an order on summary judgment
5 on liability and a determination on damages.

6 And so we believe we will prevail on the 5229.
7 It is not clear to us that we actually need to show the TRO
8 standard here. We can, and we have the irreparable harm
9 and likelihood of success and balance of equities, because
10 this essentially is preliminary relief. The 5229 is a TRO,
11 and the only requirement is a verdict in your favor.

12 So, we would submit, Your Honor, that the
13 language that we have provided in our proposed order on the
14 TRO is the correct language.

15 THE COURT: Okay. I think you have to show more
16 than that you have a judgment on liability in order to
17 secure the injunction that you are seeking. And that's
18 what will be addressed on October 8.

19 In the interim I am going to sign the temporary
20 restraining order and I am going to enjoin Mr. Kwok from
21 any activity that alters the status quo, except ordinary
22 course expenses.

23 And you will make a full record on October 8 as
24 and how you see fit. Mr. Kwok has an opportunity to
25 contest that. And on October 8 we will fashion whatever

1 relief you are entitled to as a result of what transpires
2 on October 8.

3 So, for the sake of clarity, on consent, Mr. Kwok
4 has agreed that he is not going to dispose of any of his
5 assets or pay any debts or do anything to alter the status
6 quo as it exists today, except he can engage in the
7 ordinary conduct of his life between now and October 8.

8 MS. CARVALHO: Your Honor if I could, since we do
9 have a TRO that is going to be put in place here, as new
10 counsel that is coming on board and just starting to get up
11 to speed today on this matter, is it possible to entertain
12 a request to push the October 8 date even an additional
13 week just to give counsel more time?

14 THE COURT: As long as you agree on behalf of
15 Mr. Kwok to the TRO that I am proposing, it doesn't matter
16 to the Court whether we do this on October 8 or the
17 following week.

18 MS. CARVALHO: Okay. Mr. Harmon, is that
19 something that we can agree to?

20 MR. HARMON: I think that the Judge has already
21 indicated that at least for the purpose of this hearing he
22 is considering the substitution approved and accepted
23 without objection, so I leave that to you.

24 MS. CARVALHO: Okay. Well, it was our
25 understanding that the current counsel of record was

1 handling the TRO. We weren't prepared do so today. But
2 understanding the positions that have already been voiced
3 on this and the Court's opinion, I think that that's a fair
4 compromise, if we can get some additional time to brief and
5 get to hearing on this.

6 THE COURT: All right. I don't have a calendar
7 handy. I apologize. What is a week from Monday? Would
8 that be the 12th? That's Columbus Day.

9 MS. CARVALHO: Yes.

10 THE COURT: So you are prepared to stipulate to a
11 TRO until.

12 MS. CARVALHO: The 14th or 15th, if we could.

13 MS. COSTELLO: Judge, the 15th is okay.

14 THE COURT: The 15th is okay?

15 MS. COSTELLO: Yes.

16 THE COURT: On consent counsel for Mr. Kwok is
17 agreeing to preserve the status quo and any violation of
18 the TRO will be considered a criminal contempt, so we are
19 clear.

20 MS. CARVALHO: Yes, Your Honor.

21 THE COURT: All right. I'll put that in the
22 order.

23 You are consenting to the extension of the TRO
24 that I have proposed, with the understanding that any
25 violation of it will be a criminal contempt.

1 I am waiting for a response.

2 MS. CARVALHO: Yes, Your Honor.

3 THE COURT: All right. I'll fashion an
4 appropriate order. And the plaintiff will consult the
5 authorities in the cases as to the showing that needs to be
6 made to get permanent injunctive relief of the type that
7 counsel for defendant has agreed to. But in the meantime
8 we have a temporary restraining order on consent and I'll
9 issue an appropriate order.

10 MS. CARVALHO: Okay. So Your Honor, I just want
11 to make sure, so the order to show cause hearing will be
12 set for October 15. Is there a time?

13 THE COURT: 10:00.

14 MS. CARVALHO: 10:00.

15 And before we conclude, Your Honor, could we also
16 just address the current pending damages motion which is
17 motion number nine? Our opposition to that motion is due
18 today. I spoke to Mr. Moss and requested an extension, and
19 the plaintiff agreed to only give us until this Friday,
20 which is two additional days, October 2. And just coming
21 on today that's not something that we can do. And having
22 the TRO in place we are hoping that we can come up with a
23 briefing schedule that will allow us the customary courtesy
24 to just get up to speed and be able to oppose that motion
25 appropriately. So if we could get 30 days for our

1 opposition on motion nine we would greatly appreciate it.

2 THE COURT: I don't think I want to give you 30
3 days. You can have a ten-day extension, which should be
4 more than sufficient.

5 MS. CARVALHO: That would be Monday, Columbus
6 day.

7 THE COURT: Then October 13.

8 MS. CARVALHO: Okay. And then what day would the
9 motion be returnable?

10 Mr. Moss, I think it is currently on for the 7th.

11 MR. MOSS: I think that's right. And Your Honor,
12 may I be heard on the extension request?

13 THE COURT: Yes.

14 MR. MOSS: Your Honor, this is Mr. Kwok's second
15 substitution of counsel. We are -- we already have an
16 order on liability. Our damages motion is a two-page
17 motion that says the contract says \$46 million. The
18 contract says 15 percent interest. And we put in a table
19 that has 15 percent interest per year times \$46 million
20 from the effective date through today's date. Mr. Kwok has
21 never made an argument, as the Court found in the summary
22 judgment -- in your summary judgment ruling, has never even
23 argued that he has repaid any portion of the debt under the
24 March 2011 guaranty. There is nothing to decide here other
25 than damages. We didn't even compound, which we could have

Proceedings

1 done under the contract, arguably. We did simple interest
2 which is the lowest possible number.

3 And the contract also gives us right to
4 enforcement fees. There is no question about what the
5 amount of the fees are. We have submitted evidence, we
6 have submitted invoices, we have submitted an affidavit.
7 And there is no requirement under the contract that the
8 fees be not in excess of Y or be reasonable or anything.
9 It is simply if we incurred the cost of enforcement then
10 those are the costs and those are part of damages.

11 There is really nothing to respond to here, Your
12 Honor. And every minute that we go on where we are not
13 allowed to take the discovery into the assets, even with
14 the TRO I would submit, Your Honor, even with the criminal
15 contempt, which is -- which is great, but there is still a
16 risk that this defendant -- this is a defendant who has
17 been sanctioned \$250,000 a day in Nevada because there was
18 a judgment entered against him, his counsel withdrew, same
19 movie right here. His counsel withdrew and he did not
20 provide any information -- incorrect contact information.
21 He gave the plaintiff incorrect contact information. The
22 plaintiff couldn't take discovery and Mr. Kwok was
23 sanctioned for not providing the information. That's a
24 \$200,000 debt, Your Honor. How do you think he going to
25 handle a \$120 million debt. There is a huge risk here.

mlp

1 And we need to get to the judgment as soon as possible.

2 The contract was signed in March of 2011. We have been
3 pursuing him for a decade. He has dragged us along on this
4 case. He has absolutely no defense. It took three years
5 and he had absolutely no defense. We need a judgment now,
6 it is not a complicated motion.

7 MS. CARVALHO: Your Honor, if I could just
8 respond. This is not going to be an uncontested motion.
9 The defendant has the right, irrespective of what is
10 happening in Nevada or anywhere else, to oppose the motion
11 and to present defenses. And any argument to the contrary
12 is simply not right and Mr. Moss knows that.

13 With a TRO in place, especially with a criminal
14 contempt, I mean, we are asking for the customary courtesy
15 for time to get up to speed. And if the motion is a simple
16 two-page motion with no real opposition or response there
17 shouldn't be a problem here, Mr. Moss. I think that the
18 position that you are taking here is very unfair. This
19 isn't the way justice plays out. And anything that is
20 happening in Nevada is just -- it is not relevant here. We
21 are talking about the New York State proceedings. And I am
22 quite offended that those statements are even made. I
23 don't have facts on that proceeding to even be able to say
24 whether or not any of these representations are true.

25 I am not counsel of record there, I am counsel of

mlp

1 record here.

2 MR. MACARIAN: To be fair, Your Honor, those are
3 mischaracterizations as to what happened in Nevada and New
4 York. Mr. Moss doesn't have the full set of facts there.
5 It is probably a misunderstanding. I don't think it is an
6 intentional misrepresentation, but it is incorrect facts
7 that Your Honor shouldn't consider in this case.

8 MR. MOSS: We submitted the order from the Nevada
9 Judge.

10 THE COURT: We are going to have a preliminary
11 injunction type hearing on October 15. The status quo is
12 going to be maintained under penalty of criminal contempt,
13 meaning a marshal is going to come and arrest Mr. Kwok if
14 he violates the Court's temporary restraining order. I am
15 going to see you on the 15th.

16 Defense counsel's opposition papers are going to
17 be filed on the 14th. And if you want to proceed with
18 the damages issue on the 15th, since it is just a
19 two-page application and there is no defense to it, we can
20 proceed on the 15th.

21 MR. MOSS: Your Honor, when you say the
22 opposition will be due on the 14th, you mean Mr. Kwok's
23 opposition to the damages motion?

24 THE COURT: Correct.

25 MR. MOSS: And it will heard on the 15th,

1 THE COURT: Correct.

2 MR. MOSS: With no reply? That's fine with us.

3 We can respond on the 15th.

4 THE COURT: Okay. So then on the 15th we are
5 going to deal with everything. We are going to deal with
6 your application for what is, in essence, a preliminary
7 injunction. And we are going to deal with your motion for
8 judgment on the damages issue.

9 MS. CARVALHO: Thank you, Your Honor.

10 THE COURT: So everybody is satisfied with the
11 arrangements that we discussed this morning? Is that
12 correct?

13 MR. MOSS: Yes, Your Honor.

14 Your Honor, if I can clarify it, when is the
15 opposition to our injunction due? Will we get a reply on
16 that?

17 THE COURT: Counsel, new counsel for Mr. Kwok.

18 MS. CARVALHO: Yes, Your Honor?

19 THE COURT: When are you going to file your
20 opposition to the motion for a preliminary injunction?

21 MS. CARVALHO: I had thought we were doing that
22 October 13 or 14th, unless I was confused.

23 THE COURT: October 13.

24 MS. CARVALHO: Okay.

25 THE COURT: And if Mr. Moss wants to respond to

1 that on or before the 15th we will resolve everything on
2 the 15th.

3 MR. MOSS: Your Honor, can we put the same
4 schedule in on damages? Just because I don't know what
5 they are going to say on damages. They are now saying they
6 have new arguments. If they could put their damages
7 motion -- opposition in and the PI in on October 13 we will
8 get you reply papers before the hearing on both.

9 THE COURT: That's what -- that's what I just
10 said.

11 MR. MOSS: I think you had October 14 originally.

12 MS. CARVALHO: For the damages.

13 MR. MOSS: For the damages opposition. And I am
14 asking for both oppositions to be due October 13.

15 THE COURT: Both oppositions will be filed on the
16 13th.

17 MR. MOSS: Thank you, Your Honor.

18 MS. CARVALHO: Okay, Your Honor. Thank you.

19 THE COURT: All right. Have a nice day. I am
20 going to sign off. It is very important that you order a
21 copy of the transcript of the proceedings of today. I
22 would ask that it be ordered on an expedited basis. I'll
23 so order it. I will also issue a short memorandum decision
24 incorporating what we have discussed and agreed to today.

25 MR. MOSS: May I ask one clarifying question on

1 the hearing on the 15th -- on the injunction part of the
2 hearing? If the other side is planning to bring Mr. Kwok
3 or any witnesses, can we have a date by which, even if it
4 is just a couple of days before, the parties exchange
5 witness lists. It is not clear to me whether or not this
6 is going to be an evidentiary hearing or not. And if they
7 are planning to bring any witnesses we would like to at
8 least have 48 hours notice.

9 THE COURT: That's fair. So, both parties will
10 submit witness lists to each other and to the Court on the
11 13th.

12 MR. MOSS: Thank you.

13 THE COURT: All right. Now please get the court
14 reporter's information so you can order an expedited
15 transcript of today's proceedings.

16 MR. MOSS: We will, thank you, Your Honor.

17 THE COURT: Have a nice day everyone.

18 MR. HARMON: Thank you, Your Honor.

19 MS. CARVALHO: Thank you.

20 * * *

21 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL
22 STENOGRAPHIC MINUTES IN THIS CASE.

23 Michele Panteloukas

24 MICHELE PANTELOUKAS

25 SO-ORDERED 10-7-2020

 SENIOR COURT REPORTER


BARRY R. OSTRAGER, J.S.C.